

Richard M. Stephens  
STEPHENS & KLINGE LLP  
10900 NE 4<sup>th</sup> Street, Suite 2300  
Bellevue, WA 98004  
425-453-6206

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

ENRIQUE JEVONS, as managing member of Jevons Properties LLC, FREYA K. BURSTALLER as trustee of the Freya K. Burgstaller Revocable Trust, JAY GLENN and KENDRA GLENN.

## Plaintiffs.

VS.

JAY INSLEE, in his official capacity as Governor of the State of Washington and ROBERT FERGUSON, in his official capacity of the Attorney General of the State of Washington.

## Defendants

No. 1:20-CV-03182-SAB

Plaintiffs' Response to Defendants'  
Statement of Material Undisputed  
Facts and Reply Statement of Material  
Facts not in Dispute

Noted for July 1, 2021

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**PLAINTIFFS' RESPONSE TO DEFENDANTS'**

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**STATEMENT OF MATERIAL FACTS NOT IN DISPUTE**

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5 Pursuant to Local Civil Rule 56(c), Plaintiffs submit this Response to Defendants Statement  
6 of Material Facts Not in Dispute in conjunction with their Cross-Motion for Summary Judgment:

7

Defendants' Facts	Plaintiffs' Response and Supporting Evidence
1. Because of the speed with which COVID-19 spreads in a community and the portion of COVID-19 patients who require hospitalization, intensive care, and mechanical ventilation, outbreaks threaten to overwhelm the healthcare system. Lindquist Decl. ¶ 12.	Plaintiffs object on the grounds that there is no foundation for the conclusion that there is a present threat to overwhelm the healthcare system.
2. Without efforts to stop person-to-person transmission, studies have shown that unmitigated spread of COVID-19 would lead to an explosion of cases, many more hospitalizations and fatalities, and an untenable burden on the healthcare system. Lindquist Decl. ¶ 17.	
3. Without a vaccine or highly effective treatment for COVID-19, reducing person-to-person transmission through	Plaintiffs object on the grounds that there is no foundation for the conclusion that there is no vaccine for COVID-19.

1 community mitigation measures is the most 2 effective way of mitigating the outbreak and 3 ensuring that the healthcare system is not 4 overwhelmed. Lindquist Decl. ¶ 20. 5 6 4. An analysis of Seattle unlawful 7 detainer cases showed that most evictions result 8 in homelessness, with only 12.5% of evictees 9 finding another home. Declaration of Cristina 10 Sepe in Support of Defendants' Cross-Motion 11 for Summary Judgment (Sepe Decl.), Ex. A at 12 3. 13 14 5. The Department of Health was 15 concerned about outbreaks of COVID-19 16 among persons experiencing housing insecurity 17 and homelessness because they are generally at 18 increased risk of acquiring COVID-19 due to 19 crowded living situations, among other reasons, 20 and are often at increased risk for severe 21 COVID-19 due to underlying medical 22 conditions and co-morbidities. Lindquist Decl. 23 ¶ 48.	Plaintiffs object on grounds of relevance under FRE 402 in that an analysis of circumstances in Seattle is not shown to be relevant in Yakima where Plaintiffs' properties are located.
6. Evictions themselves force	

<p>1 families into transiency and crowded residential  2 environments that increase new contact with  3 others and make compliance with pandemic  4 health guidelines difficult or impossible.  5 Lindquist Decl. ¶ 54. Housing insecure families  6 often “double-up”—moving in with family  7 members or friends—in the wake of evictions.  8 Lindquist Decl. ¶ 55, Ex. J.</p>	<p>Plaintiffs object on the grounds that the statement of fact is unsupported by the evidence to the extent the statement states that “evictions themselves force family into ... crowded residential environments ... and make compliance with pandemic health guidelines difficult or impossible.” The declaration indicates this could be true and not that it is true in every situation.</p>
<p>11  12       7. As of April 24, 2021, the  13 Department of Health (DOH) has identified  14 202 COVID-19 outbreaks in homeless services  15 or shelters. Lindquist Decl. ¶ 58, Ex. N at 4.</p>	<p>Plaintiffs object on the grounds of relevance under FRE 402 in that there is no evidence to show outbreaks in homeless services or shelters in Yakima.</p>
<p>16       8. A rise in evictions, and the  17 lifting of their moratoria, has been found to  18 lead to significant increases in COVID-19  19 infections and deaths. Baumgart Decl. ¶10, Ex.  20 S; Lindquist Decl. ¶¶ 60–62, Exs. O, P, Q.</p>	<p>Plaintiffs object on the grounds that the statement misstates the evidence cited, namely the Lindquist declaration which is based on simulations which is not a finding that a rise in evictions in fact leads to significant increases in infections and death.</p>

<p>1           9. Containment of COVID-19 is  2 slower and less effective at reducing the size of  3 the pandemic when evictions are allowed to  4 continue, even under lockdown scenarios.  5 Lindquist Decl. ¶ 60, Ex. O.</p>	
<p>6           10. In amending the Moratorium,  7 the Governor's Office sought input from many  8 stakeholders, including residential property  9 owners, managers, and landlords. Leathers  10 Decl. ¶ 19; Baumgart Decl. ¶¶ 15–17. Based on  11 their input, the Governor added several  12 exceptions to protect property owners and  13 induce tenants able to pay rent to do so.</p>	<p>Plaintiffs object based on relevance under FRE  402.</p>
<p>14           11. Following input from property  15 owners regarding the treatment of unpaid rent  16 as an enforceable debt, starting with  17 Proclamation 20-19.1, the Moratorium allows  18 owners to treat unpaid rent as an enforceable  19 debt if the tenant was offered but refused a  20 reasonable repayment plan. Baumgart Decl.  21 ¶ 17. The provision was meant to strike a  22 balance between alleviating stress on tenants</p>	<p>Plaintiffs object on the grounds that this is not a  statement of fact but a statement of the law, nor  is the meaning of the law appropriate for lay or  expert testimony.</p>

1 and providing an avenue for landlords to be  
2 made whole. It reduces the risk of “soft  
3 evictions” while encouraging landlords and  
4 tenants to work together. *Id.*

5       12. The Governor’s Office opted to  
6 not place the burden of proof on tenants by  
7 instead imposing a moratorium on evictions  
8 with certain exceptions. Baumgart Decl. ¶ 18.  
9 This decision was made because, in many  
10 cases, tenants in genuine economic distress due  
11 to the pandemic are unable to provide adequate  
12 proof of their distress. *Id.* Many tenants have  
13 informal employment or non-traditional  
14 sources of income. For these tenants, proving  
15 distress may not be as simple as submitting a  
16 copy of a termination letter from an employer.  
17 *Id.* A tenant who does not lose their job could  
18 be facing pandemic-related economic distress  
19 anyway, such as the burden of caring for family  
20 members who lost their jobs or are unable to  
21 provide for themselves. *Id.* Not all tenants in  
22 need of protection are able to submit a

1 declaration of hardship. <i>Id.</i>	
2       13. The Moratorium and the Governor's public messaging has expressly 3 stated that tenants should pay rent if able and 4 should communicate with their landlords. 5 Baumgart Decl. ¶ 18.	Plaintiffs object on the grounds that what the "moratorium" states is a question of law and not appropriate for lay or expert testimony and the "public messaging" is irrelevant and should be excluded under FRE 402.
6       14. The Moratorium does not forgive any debt of unpaid rent and stresses that 7 tenants "who are not materially affected by 8 COVID-19 should and must continue to pay 9 rent." Leathers Decl., Ex. M.	Plaintiffs object in that this is a statement of law and inappropriate for testimony and that the moratorium speaks for itself.
10      15. During the pandemic, at least 11 18,000 more Washingtonians have had to rely 12 on cash assistance and 160,000 more on food 13 assistance. Baumgart Decl., Ex. I at 3–4.	
14      16. Over 1.6 million 15 Washingtonians have filed unemployment 16 claims, and the State's unemployment rate has 17 exceeded its Great Recession peak. Baumgart 18 Decl. ¶ 7. Through the first four months of this 19 year, over 265,000 <i>new</i> unemployment claims 20 were filed, showing that the jobs crisis persists	

1 more than a year after COVID-19 cases first  
2 emerged here. Baumgart Decl., ¶ 7, Ex. I; Sepe  
3 Decl., Ex. I.

4       17. Recent Census survey data  
5 reported that 10.7% of renters in Washington  
6 (160,080 people) are behind on their rent.  
7 Baumgart Decl., Ex. Z. 17.8% of renters  
8 (265,342 people) reported having little or no  
9 confidence in their ability to make rent. *Id.*

10      18. An analysis by the Aspen  
11 Institute found that 649,000 to 789,000 people  
12 in Washington (up to 10.3% of the population)  
13 would be at risk of eviction without the  
14 Moratorium. Baumgart Decl., Ex. N at 8.

15      19. Projections performed by the  
16 University of Washington Institute for Health  
17 Metrics and Evaluation state that mass  
18 evictions would result in between 18,235 to  
19 59,008 more eviction-attributable COVID-19  
20 cases, 1,172 to 5,623 more hospitalizations, and  
21 191 to 621 more deaths in Washington State.

22 Declaration of Dr. Christopher J. L. Murray in

23 Plaintiffs object on the grounds that the  
projections are not shown to apply in Plaintiffs'  
tenants' circumstances and are, therefore,  
irrelevant and should be excluded under FRE  
402.

1 Support of Defendants' Cross-Motion for  
2 Summary Judgment (Murray Decl.), Ex. B.  
3

4       20. On March 27, 2020, Congress  
5 enacted the Coronavirus Aid, Relief, and  
6 Economic Security (CARES) Act, which  
7 included \$150 billion in direct assistance for  
8 state, territorial, and tribal governments. Pub.  
9 L. No. 116–136, 134 Stat. 281 (2020). From  
10 this fund, in early August 2020, Washington  
11 allocated more than \$100 million in Eviction  
12 Rent Assistance Program (ERAP) grants.  
13 Baumgart Decl. ¶ 12.

14       21. ERAP funds, administered by  
15 local community organizations, provide up to  
16 three months of rent assistance to property  
17 owners on an eligible tenant's behalf. Baumgart  
18 Decl. ¶ 12. Cities and local authorities may run  
19 their own rental assistance programs, including  
20 as encouraged through certain tax programs  
21 under state law. *Id.*

22       22. In April 2021, the Washington  
23 Legislature adopted—and the Governor signed

Plaintiffs object on the grounds that this statement of fact is really a statement of law and that this statement is irrelevant to the claims at issue in this case and should be excluded under FRE 402.

Plaintiffs object on the basis that the statement is vague and does not disclose that in order to be eligible for ERAP funds one must waive any right to unpaid rent beyond three months of unpaid rent.

1 into law—a bill that provides tenant protections  
2 during and after this current public health  
3 emergency. Under that bill, the eviction  
4 moratorium instituted through Proclamation  
5 20-19.6 ends on June 30, 2021. Engrossed  
6 Second Substitute S.B. 5160, 67th Leg., Reg.  
7 Sess. (Wash. 2021), *enacted as* 2021 Wash.  
8 Sess. Laws, ch. 115.

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12 **PLAINTIFFS' REPLY TO DEFENDANTS' STATEMENT OF DISPUTED FACTS**

13

14 Defendants disputed only the following facts in Plaintiffs' Statement of Undisputed Facts  
15 for Motion for Summary Judgment (filed at ECF No. 23). Plaintiffs' reply follows:

16 <b>Plaintiffs' Facts</b>	17 <b>Defendants' Response and Supporting Evidence</b>
18 20. Tenants generally do not provide information about their financial or health circumstances or answer questions in an attempt to gather that information.	19 This statement should be disregarded because it is an unsupported conclusory statement. Plaintiffs offer no evidence regarding their attempts to communicate with tenants to learn about their financial or health circumstances. A form demand letter produced by the Glenn 20 21 Plaintiffs, for example, did not ask for the 22 23

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	financial or health circumstances of their tenants. <i>See Sepe Decl., Ex. P.</i>
23. Funds available through the Washington State Department of Commerce would pay only 80% of three months of delinquent rent and the owner of the property must agree to waive all other past due rent.	Disputed, subject to clarification, though this is not material as to preclude summary judgment. The Eviction Rent Assistance Program can cover unpaid rent at 80% or Fair Market Rent, whichever amount is higher. <i>See ECF No. 24 at 12.</i> Fair Market Rent for a one-bedroom apartment in Yakima County is \$769 for FY 2020 and \$792 for FY 2021. <i>See Sepe Decl., Ex. S.</i>
28. Because the Proclamations on eviction allow eviction when an owner decides to sell, numerous owners choose to sell their property, which further restricts the supply of rental housing.	This statement should be disregarded because it is an unsupported conclusory statement. It is not disputed that some property owners have opted to sell their properties during the pendency of the Moratorium, but whether the property is no longer used as rental housing is not supported by evidence.
46. Until September or October of 2020, when rental assistance is sought by a tenant through the Department of Commerce, if available and granted, it is limited to three	Disputed, subject to clarification, though this is not material as to preclude summary judgment. The Eviction Rent Assistance Program can cover unpaid rent at 80% or Fair

1 months of unpaid rent and 80% of the rent. 2 The Department of Commerce required the 3 landlord to waive any other unpaid rent. 4 5	Market Rent, whichever amount is higher. <i>See</i> ECF No. 24 at 12. Fair Market Rent for a one- bedroom apartment in Yakima County is \$769 for FY 2020 and \$792 for FY 2021. <i>See</i> Sepe Decl., Ex. S.
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7 Plaintiffs' Reply follows the numbered paragraphs above:

8 20. While Defendants assert this fact is conclusory, they offer nothing to dispute it, nor  
9 raise an objection based on the Federal Rules of Evidence. The asserted fact is that tenants  
10 generally do not provide financial information to their landlords (after they have applied to  
11 initially occupy the property) or provide details of their health to landlords. The lack of  
12 information coming from tenants is a natural response since it is not in the tenants' best financial  
13 interests to provide that information because they will not have to pay their unpaid rent if they do  
14 not give that information to the landlord. The fact asserted is supported by Plaintiffs' history in  
15 the rental business and historical and current interactions with tenants. *See* Second Declaration of  
16 Rick Glenn and Second Declaration of Enrique Jevons filed concurrently herewith.

17  
18 28. This fact is not critical to the pending motion.

19 23 and 46. It is not disputed that funds available through the Department of Commerce  
20 require the owners of property to waive a right to collect unpaid rent as a condition of receiving  
21 rent covering only three months.

1  
DATED June 9, 2021.  
2

3  
Stephens & Klinge LLP  
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5  
s/Richard M. Stephens  
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Richard M. Stephens, WSBA 21776  
8  
10900 NE 4<sup>th</sup> Street, Suite 2300  
9  
Bellevue, WA 98004  
10  
425-453-6206

11  
I, Enrique Jevons, hereby declare:  
12

13  
1. I am a Plaintiff in this action, am over 18 years of age and am competent  
14  
based on my personal knowledge to testify to the following:  
15

16  
2. I am the managing member of Jevons Properties LLC which owns several  
17  
hundred residential units which are rented to tenants. Jevons Properties LLC also  
18  
manages rental units for other owners. I have been in this business for over 13  
19  
years. It has been my experience that tenants generally do not want to disclose  
20  
information about their financial circumstances to our firm, except when they have  
21  
to such as when they are applying for the opportunity to rent. It has been my  
22  
experience that tenants generally do not want to disclose their health or medical  
23  
conditions with our firm. We have not inquired specifically about these issues with  
our clients because it seems to be devious on our part to ask them to give  
information which is definitely not in their interest to give because if they gave that  
information we could form a repayment plan that would be reasonable in light of  
their health and financial circumstances. We have no interest in being tricky.

1       3. Out of desperation, on April 23, 2021, our firm sent to all of our tenants who  
2       are not current with their rent, 56 in total, a letter like the one attached hereto as  
3       Exhibit A, with each tenant's name and listing of past due rents. Exhibit A has the  
4       name and address of the tenant redacted to protect that tenant's privacy. Exhibit A  
5       was intended to allow a tenant to propose a reasonable repayment plan because I  
6       have no way of knowing what would be reasonable in light of individual tenants'  
7       health and financial circumstances. In my earlier declaration I indicated that no  
8       tenants responded to requests for repayment. Since I signed that earlier declaration  
9       in April of 2021, out of the 56 that were sent out, only 3 responded with any  
10      proposed repayment plan.

12       4. I declare that the foregoing is true and correct under penalty of perjury and  
13      that this declaration was executed by me in Yakima, Washington on June 9, 2021.

# Enrique Jevons